

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE	.	
COMMISSION,	.	
	.	
Plaintiff,	.	Case No. 18-cv-09284
	.	
vs.	.	Newark, New Jersey
	.	March 4, 2019
PARMJIT PARMAR, et al.,	.	
	.	
Defendants.	.	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

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1 (Commencement of proceedings at 11:24 A.M.)

2

3 THE COURT: All right. We are on the record in the
4 United States Securities and Exchange Commission versus
5 Parmjit Parmar, et al., Civil No. 18-9284. We're here for
6 oral argument on the Government's motion to stay the civil
7 case pending adjudication of the criminal charges. The
8 criminal charges are -- well, let's start with appearances of
9 counsel, please, beginning with the plaintiff.

10 MR. ENRIGHT: Good morning, Your Honor. John
11 Enright on behalf of the Securities and Exchange Commission.

12 THE COURT: All right. And for the defense?

13 MR. PARLATORE: Good morning, Your Honor. Tim
14 Parlatore on behalf of Mr. Parmar.

15 THE COURT: All right.

16 MR. GRIPPO: Good morning, Your Honor. Nicholas
17 Grippo, United States attorney on behalf of the United
18 States, the intervenor -- or proposed intervenor here. With
19 me at counsel table is Leslie Lehnert from the Money
20 Laundering and Asset Discovery Section of the Department of
21 Justice, and Katherine Murphy, who's an AUSA at the U.S.
22 Attorney's Office. Ms. Murphy and Ms. Lehnert are counsel of
23 record in the parallel criminal case. They have not yet
24 entered an appearance in this case, but they're appearing
25 with me on behalf of the Government.

1 THE COURT: All right. So the first item of
2 business is the Government's motion to intervene. I did not
3 understand the defense to be opposing the intervention motion
4 as much as the stay motion.

5 Is that correct?

6 MR. PARLATORE: Correct, Judge. Really to narrow
7 it even further, it's more just the timing of when the stay
8 will go into effect.

9 THE COURT: No, I understand. We're going to get
10 to that. We're going to cover that.

11 MR. PARLATORE: So -- yes.

12 THE COURT: Let me just get on the -- deal with the
13 intervention first.

14 I also agree that under Fed. R. Civ. P. 24, that
15 the Government -- the Government's motion to intervene should
16 be granted. Under Rule 24(a)(2), a potential intervenor has
17 four criteria that they must satisfy: One, the application
18 to intervene must be timely; two, there must be a sufficient
19 interest by the intervenor in the litigation; three, that
20 interest must be subject to being impaired or affected by
21 disposition of the matter sub judice; and, four, the
22 interests of the intervening party are not adequately
23 protected by the present litigants. See United States v.
24 Territories of the Virgin Islands, 748 F.3d 514 at 519 (3d
25 Cir. 2014).

1 In this case, the Court is satisfied, one, that the
2 application to intervene is timely; second, that the
3 Government does have a sufficient interest which could be
4 impaired or affected by the current civil litigation -- of
5 course, I make that observation -- or that conclusion on the
6 motion to intervene, not on the stay issue, which we'll
7 address in a motion. It is at least -- it's possible that
8 the -- the Government obviously has an interest and the
9 public has an interest in the effective investigation and
10 enforcement of federal law, which could be impaired or
11 affected as a practical matter by disposition of the civil
12 case. Moreover, the Court accepts the Government's
13 representation that the present litigants are not capable of
14 adequately representing the Government's interests in the
15 criminal case insofar as the SEC is a civil litigant in this
16 matter.

17 So for those reasons and given the fact that the
18 defense does not object to the motion to intervene, that
19 application is granted.

20 We can now turn to the stay. At this point, who's
21 going to be arguing the stay issue for the Government?

22 MR. GRIPPO: Your Honor, I will be.

23 THE COURT: Mr. Grippo?

24 MR. GRIPPO: Yes.

25 THE COURT: Okay. So let's tee up first sort of

1 | where we are and exactly what is at issue. And this is
2 | something, I think, that Mr. Parlatore touched on briefly
3 | before.

4 | So the civil case has been filed, and it's pending.
5 | Nothing other than this motion and the -- a motion to dismiss
6 | filed by Mr. Parmar has been filed. There's been no
7 | discovery. And, importantly, I think, because this certainly
8 | factors into the defendant's argument, there's no -- the
9 | defense does not oppose the motion to stay, because the
10 | defense is seeking discovery. If I understand correctly, the
11 | sole issue is whether to stay the case entirely or whether to
12 | allow the case to proceed for the relatively narrow purpose
13 | of allowing the defense to proceed with the motion to
14 | dismiss.

15 | There are criminal charges that are pending against
16 | Mr. Parmar; also the co-defendants. They were filed in May
17 | 2018. And I don't -- I did not get the sense from the
18 | parties' papers that there's much dispute about the
19 | similarity of factual issues or factual allegations, at
20 | least -- and to some extent, perhaps, legal issues between
21 | the criminal complaint and the civil matter.

22 | MR. PARLATORE: I agree with everything you just
23 | said there.

24 | THE COURT: Right. And since it's the Government's
25 | motion -- and obvious I'll be hearing from Mr. Parlatore in a

1 moment.

2 Mr. Grippo, given that all the defense wants to do
3 is be heard on the motion to dismiss and
4 Fed. R. Civ. P. 12(b)(6), a motion to dismiss by definition
5 tests only the sufficiency of the pleadings -- I also know
6 there's a 9(b) component to that. But all, really,
7 Fed. R. Civ. P. 9(b) is the enheightened -- or is the
8 heightened pleading standard. So we have Fed. R. Civ. P. 8,
9 which generally governs pleadings and the sufficiency of
10 pleadings before the Court except when it comes to fraud,
11 which, of course, is governed by the particularity
12 requirements of Fed. R. Civ. P. 9(b).

13 If all the defense is arguing is, Judge, we should
14 be allowed to proceed with this case for the limited purpose
15 of being heard on whether the complaint, in its pled -- in
16 its current pleading form states a viable -- a recognizable
17 cause of action and that we, the defendants, are not seeking
18 any discovery in this case, nor will the motion trigger the
19 need for discovery, why should I grant the stay? Much of the
20 briefing, at least on the Government's side, talks about the
21 Walsh factors, one, where the court really there limited its
22 analysis to -- or there was concern solely with
23 interrogatories and depositions.

24 That's not at issue here.

25 So how will the motion to dismiss, limited as it is

1 to the sufficiency of the pleadings, imperil the Government's
2 criminal investigation?

3 MR. GRIPPO: Thank you, Your Honor.

4 Your Honor, before answering that question, just
5 one additional update. The Court laid out the factual and
6 procedural background.

7 The case has now indicted Mr. Parmar and the
8 defendants on a criminal complaint and one additional
9 defendant, Pavandeep Bakhshi, were indicted by a grand jury
10 in December.

11 THE COURT: Okay.

12 MR. GRIPPO: So that is an update on the procedural
13 status.

14 And that favors the stay motion.

15 But focusing on the Court's question --

16 THE COURT: Well, it does and it doesn't, though.
17 Right? I mean, to the extent -- again, it's important to
18 sort of segregate out what would happen if I deny the stay,
19 what won't happen if I deny the stay.

20 What would happen is -- well, what wouldn't happen
21 is there would be no discovery still. And so the Fifth
22 Amendment concerns that, for example, Judge Bassler talked
23 about in Walsh still wouldn't obtain, you know -- the
24 interesting thing is in Walsh, it was the defense that was
25 looking for the -- the individuals who were on the receiving

1 end of the criminal charges who were looking for the stay.

2 It wasn't the Government. Right?

3 MR. GRIPPO: Yes, Your Honor.

4 THE COURT: And their concerns there were,
5 essentially, if we're required to go forward, you're going
6 to -- you, Judge, are going put us in this tenuous position
7 that (A) in answering interrogatories, we may have a dispute
8 over Fifth Amendment privilege issues, and, in fact, Judge
9 Bassler noted in an aside, even during the oral argument, it
10 became evident to the court that there were going to be
11 privilege disputes that the court would then have to rule on;
12 certainly in depositions.

13 But I still don't -- even though the case is now
14 indicted, the criminal case is, I'm still not sure that I see
15 how -- certainly, it doesn't give rise to the defendant's
16 Fifth Amendment concerns, and, if so, they want to proceed.

17 How does it imperil the Government's criminal
18 investigation?

19 MR. GRIPPO: Your Honor, let me answer that
20 question, because we are here on one very narrow issue. This
21 motion to dismiss is not a typical motion to dismiss that the
22 Court has likely seen and become familiar with in the context
23 of Rule 12(b)(6).

24 This is a highly intensive, fact-intensive
25 motion --

1 THE COURT: Sorry. I'm not trying to block you as
2 much as just pull up --

3 MR. GRIPPO: Understood, Your Honor. Understood.

4 THE COURT: -- the motion.

5 Go ahead.

6 MR. GRIPPO: The motion to dismiss is a
7 fact-intensive -- is a fact-intensive response by the
8 defendant that includes a number of wide-ranging allegations
9 and theories we believe are at the heart of the defendant's
10 defenses in the criminal case. And although the SEC can
11 reply on its pleadings in responding, the SEC may also feel
12 compelled to respond to some of the very fact-intensive and,
13 in our view, completely meritless allegations of the
14 defendant. But they are the same allegations that we are --
15 have heard and will likely face in the criminal case.

16 And we think there are two compelling reasons to
17 deny -- or to grant -- excuse me -- the Government's motion.
18 One is, as a matter of public policy, courts favor the
19 criminal proceeding over the civil proceeding when there are
20 competing interests. And we believe there are competing
21 interests here, because allowing the SEC's pleading to be
22 litigated in the manner in which the defendant has presented
23 it, will involve, we believe, at least some fact-intensive
24 litigation.

25 And, Your Honor, we think that allowing the

1 criminal case to proceed first would resolve many, if not all
2 of the issues that are pending in the SEC case.

3 But also, Your Honor, as a matter of judicial
4 efficiency and efficiency for the parties, it makes little
5 sense to us to have a court spent the time reviewing the SEC
6 complaint and reviewing Mr. Parmar's allegations and
7 responses, when all of those issues are going to be first
8 decided in the criminal case before a jury or even before the
9 Court.

10 So as just a matter of efficiency and preserving
11 the resources of the Court and the parties, we believe a stay
12 is in everyone's interest.

13 And last, Your Honor, we cannot think of a form of
14 prejudice to the defendant -- and Mr. Parlatore has not
15 offered any argument on prejudice -- to allowing the criminal
16 case to proceed first and freezing the SEC case in its
17 current status. Nothing else will happen. The complaint
18 will remain pending. And there's just no harm to Mr. Parmar,
19 who is indicted now and will be focusing -- and rightly so --
20 on a criminal case which is active and is currently pending
21 before Judge Arleo.

22 We do not have a trial date in that case,
23 Your Honor --

24 THE COURT: I'm sorry. Did you say the indictment
25 is also signed by Judge Arleo?

1 MR. GRIPPO: Yes.

2 THE COURT: Okay. Let me ask you this. What is
3 the relationship between the many exhibits filed by the
4 defense as part of their motion, which isn't really a motion
5 to dismiss at all; it's more like a Rule 12(c) except for the
6 fact that there's been no answer filed.

7 What is the relationship between those documents
8 and the allegations in the complaint? Because on the one
9 hand, you're right, the -- it's not a typical motion to
10 dismiss in the sense that it's a legal argument that
11 basically argues that the pleadings in the complaint, even
12 taken as true, nonetheless are insufficient to state a
13 viable -- or cognizable cause of action and where, as here,
14 the Court is also then being called upon -- or possibly being
15 called upon to interpret and apply numerous documents, some
16 of which are north of a hundred pages in length, goes beyond
17 the parameters of a Rule 12(b)(6) motion.

18 On the other hand, under Rule 12(c), the Court may
19 consider matters outside the pleadings to the extent the
20 pleadings incorporate them.

21 So what are -- what is the relationship between
22 these many exhibits and the pending motion -- or the
23 allegations in the complaint?

24 MR. GRIPPO: Your Honor, it's our understanding
25 that the exhibits support or purport to support the

1 defendant's arguments that there's no fraud here. Those
2 exhibits, according to the defendant, exonerate him on the
3 underlying civil fraud claims and the criminal claims.

4 And although the Court can confine its analysis to
5 the pleadings, that is not what Mr. Parmar is asking the
6 Court to do. He's launching into the merits of the
7 underlying allegations. Those allegations overlap almost
8 completely with the allegations in the indictment. And he's
9 asking -- or at least attempting to get into the merits of
10 the underlying claims. And that is what we're concerned
11 about only because as a matter of efficiency and process, we
12 believe that those claims and those arguments should be heard
13 in the criminal case. Mr. Parmar is certainly entitled to
14 put on a defense. But we're not attempting to limit that in
15 any way in the criminal case. This is solely a matter of
16 process and prioritizing the active indicted criminal case
17 over the civil litigation.

18 THE COURT: So let me ask you this. I'm sure
19 you've had an opportunity to consider the -- to closely study
20 the defendant's motion to dismiss.

21 How, in your best estimate, would you see that
22 playing out terms litigating that motion? Would the parties
23 be limited to -- or would some -- any discovery be required
24 in order to argue the veracity or not of the defendant's
25 arguments to the extent they rely on the exhibits?

1 MR. GRIPPO: Your Honor, I don't -- I do not want
2 to speak on behalf of the SEC, who would be litigating that
3 motion.

4 But I certainly could envision the SEC feeling
5 compelled to respond to some of the fact-sensitive
6 allegations. Whether that leads to some limited discovery, I
7 don't -- I'm not in a position to say --

8 THE COURT: Okay.

9 MR. GRIPPO: -- because the SEC may --

10 THE COURT: Okay. Let me put that to the SEC.

11 MR. ENRIGHT: Judge, sitting here today, I don't
12 believe we would need discovery to adequately oppose the
13 defendant's motion to dismiss.

14 THE COURT: Okay. So -- because there are very
15 substantial exhibits. Are these all exhibits that were
16 incorporated into the Government's complaint? Or are you
17 arguing that the Court itself would need to consider those
18 exhibits in considering the motion to dismiss?

19 MR. ENRIGHT: The latter, Your Honor.

20 THE COURT: Okay. All right. Thank you. I
21 appreciate that.

22 Anything else from you, Mr. Grippo? I mean, I'll
23 give you an opportunity to respond after Mr. Parlatore's
24 argued.

25 MR. GRIPPO: I think that's it, Your Honor. I'll

1 just reserve the opportunity to respond --

2 THE COURT: All right.

3 MR. GRIPPO: -- as Your Honor noted. But thank
4 you.

5 THE COURT: All right.

6 So, Mr. Parlatore, I have to -- I have to admit, I
7 do agree with Mr. Grippo that this is far from your ordinary
8 Rule 12(b)(6). You've -- you're asking the Court to consider
9 hundreds of pages of documents and exhibits that include a
10 number of emails, prior motions, documents that were
11 purportedly exchanged, you know, during the efforts by the --
12 or during the alleged efforts by the defendants to have the
13 private investment firm provide funding and representations
14 that were made to them during that period.

15 Why does it make sense for the Court to delve into
16 all of these matters that go beyond just the four corners of
17 the complaint, given the case has been charged, it's actually
18 now indicted, as opposed to waiting until after the criminal
19 case has run its course.

20 MR. PARLATORE: Your Honor, our position is that
21 all of the exhibits there are part of the due diligence
22 materials, which were incorporated by reference into the
23 complaint. The underlying facts of this case relate to a
24 publicly traded company that was taken private. And the
25 allegation is that the value was inflated and false

1 information was provided.

2 And while the complaint relies upon all the due
3 diligence materials incorporating those, they then
4 selectively quote from just a couple of spreadsheets and
5 models from very early on without considering the totality of
6 all of the true data that was supplied.

7 So, therefore, my client's position is that under
8 12(b)(6) that -- that when you consider all of the documents
9 that are referenced and incorporated by reference in the
10 complaint, that it's insufficient. You know, the -- what
11 they're saying can't be.

12 Now, we filed that motion, you know, within the
13 required period of time, and we -- Mr. Parmar does not want
14 to have all of these cases hanging out there. There was no
15 need for the SEC to file this case but for the -- of course
16 the joint press release at the beginning of the case. The
17 fact that they wanted to put this out at the beginning as
18 well as a related in rem civil forfeiture proceeding, they
19 put all these out there at the same time. Mr. Parmar has the
20 right to defend himself in all three of these cases. The
21 SEC's civil complaint and the in rem civil forfeiture
22 complaint, motions to dismiss have been filed in both of
23 those cases.

24 One thing that I would like to address related to
25 the fact that the case has now been indicted, that actually

1 goes against the Government's application here because when
2 initially this motion was made, there was discussion about if
3 due diligence materials were -- that were incorporated by
4 reference are put into the motion to dismiss, the SEC may
5 want to respond with additional due diligence materials,
6 which wouldn't be subject to discovery yet, as it was
7 unindicted.

8 At this point, Mr. Parmar's been indicted. So any
9 documents that the SEC would choose to put in their response
10 saying this was also incorporated by reference into the
11 complaint is something the Government should have already
12 given us anyway. So there's -- there's no issues whatever
13 about this case in any way impacting discovery or anything
14 else in the criminal case.

15 The problem is -- and the reason why the -- this
16 and the in rem civil forfeiture case should be litigated at
17 this point is that we have two civil complaints and a
18 criminal indictment that allege wrongdoing against Mr. Parmar
19 that's just not supported. So he does have the absolute
20 right to move to dismiss these at this time.

21 One thing that Your Honor should be aware of is
22 that the related in rem civil forfeiture case where they did
23 file special interrogatories and there has been discussion
24 over whether that should stay the motion to dismiss, we just
25 had a conference call with Magistrate Wettre last week to try

1 figure out that issue. I've been talking with AUSA Sarah
2 Devlin in the interim. I -- I'm hopeful that we've figured
3 out that issue.

4 And Magistrate Aster at that time, if you guys
5 figure out the special interrogatory issue, does the
6 Government intend to respond to the motion to dismiss? which
7 raises substantially identical issues to this one here, and
8 AUSA Devlin said yes.

9 So they have no problem responding to a
10 substantially identical motion to dismiss in that case. But
11 here they're saying that they would be, you know, somehow
12 prejudiced when the reality is this complaint, when
13 considering what the due diligence materials that they
14 referenced, is completely insufficient.

15 I recognize that the volume of exhibits is
16 significant. This is a case that the due diligence process,
17 went from, I think, April through January. So it was a very
18 long period of time. The -- the entity that was then
19 identified as the victim in this, which, I guess, they're not
20 the victim anymore, due to the corporate victim disclosure,
21 they spent over \$7 million on the due diligence process. So,
22 yes, this is a case where due diligence materials is a
23 substantial amount of documentation. But those are the
24 documents that they cited. Those are the documents that they
25 incorporated by reference.

1 And in the complaint, when trying to lay out with
2 specificity what they're required to prove, instead of going
3 with the actual financial documents that were provided much
4 later in the due diligence, they instead took a couple of
5 selective quotes from models that were provided very early in
6 the complaint.

7 THE COURT: The concern that I have -- frankly, if
8 it were just a straightforward motion to dismiss that relied
9 solely on the four corners of the SEC's complaint, I don't
10 think it would be much of a difficult decision at all in
11 terms of denying the motion to stay. I am not even sure at
12 that point the Government would be opposing the motion.

13 But you're asking the Court here, essentially --
14 aren't you basically asking the Court with your -- as I read
15 your opposition -- to essentially make a decision now that --
16 in light of those materials, make a decision that requires
17 the Court to ascertain fraudulent intent and issues such as
18 materiality? And I don't know how the Court is possibly in a
19 position to do, particularly on a Rule 12(b)(6) motion.

20 MR. PARLATORE: I disagree with that, Judge. I
21 think --

22 THE COURT: Moreover -- let me just give you --
23 just to complete the thought.

24 Under Rule 12(d), to the extent that the Court
25 considers matters outside the pleadings, the Court then has

1 to convert the motion -- the Court's faced with a choice
2 then: Either exclude those exhibits or convert the motion to
3 a summary judgment. And if it's the latter, doesn't that run
4 the risk, as the Government had said, of inconsistent
5 judgments?

6 MR. PARLATORE: If the Court did that.

7 However, our motion to dismiss was very narrowly
8 tailored to just incorporated documents that were
9 incorporated by reference in the complaint.

10 So we would oppose --

11 THE COURT: But here's my concern --

12 (Simultaneous conversation)

13 MR. PARLATORE: -- our position is that that
14 wouldn't --

15 (Simultaneous conversation)

16 THE COURT: Here's my concern. You want the Court,
17 though, to read those and then essentially evaluate whether
18 there was fraud, whether there was fraudulent intent. I
19 mean, otherwise, I don't know why -- your argument
20 essentially is -- it's almost a rule of completeness
21 argument, isn't it? It's a -- when the Government -- when
22 the Government pled X in the complaint and referenced, for
23 example, you know, this particular email, then we told you
24 part of the story. And so, Judge, you should read the rest
25 of the email and make the decision that that "rest of the

1 story" part that the Government didn't quote in the complaint
2 thereby shows there was no fraudulent intent.

3 And I don't know how the Court possibly does that
4 on a motion to dismiss. That's not the purpose of a motion
5 to dismiss at all.

6 MR. PARLATORE: If I may, Your Honor.

7 THE COURT: Yeah.

8 MR. PARLATORE: I think that may be -- as much as
9 my client may like the Court to delve into all those merits
10 at this point, I think that the standard of a motion to
11 dismiss is at -- lower than that where we've got a situation
12 where the due diligence materials shows that there wasn't any
13 fraud. But in a motion to dismiss, every possible inference
14 goes to the plaintiff's favor. So if they have something,
15 anything that they can show in opposition that actually
16 supports their theory, that actually supports that there was
17 a fraud, it's not that difficult -- it shouldn't be that
18 difficult of a motion to defeat.

19 THE COURT: No, but it wouldn't -- they wouldn't be
20 allowed to present that in the motion. They wouldn't be able
21 to incorporate new material. At that point, then, the
22 pleading, which is supposed to be the very measure of the
23 motion -- or the sufficiency of the pleading was supposed to
24 be the very measure of the motion, ends up becoming almost
25 beside the point, and it's a moving target as to what the

1 parties are now purporting to supplement the record with.
2 That's exactly the opposite of a motion to dismiss.

3 MR. PARLATORE: Your Honor, I -- respectfully, I
4 disagree. I think --

5 THE COURT: You're free to do that. Everybody's
6 free to do that.

7 MR. PARLATORE: I think that when -- when they put
8 into the complaint due diligence materials, if they can
9 identify what -- what they incorporated by reference there
10 that supports their theory, it's not -- I think that the way
11 that this is being characterized is a much more intensive
12 analysis than is necessary at a 12(b)(6) stage.

13 THE COURT: Wait. I don't think so, though,
14 Mr. Parlatores given that you're the one that submitted -- I'm
15 going to conservatively say north of 300 pages of exhibits to
16 your Rule 12(b)(6) motion.

17 MR. PARLATORE: Yes.

18 THE COURT: How is it -- I mean, I assume you want
19 the Court to review these, to scrutinize those carefully
20 along the lines of, Judge, the Government hasn't told you the
21 entire story.

22 And I understand that.

23 My only point is I have some real concerns over
24 whether a Rule 12(b)(6) motion -- and you -- that's fair
25 advocacy. But I have real concerns over whether a

1 Rule 12(b)(6) motion in any event would be the proper vehicle
2 to do that, but particularly where, as here, there is a
3 parallel criminal case.

4 MR. PARLATORE: And my position there, Judge, is
5 that they chose to file this -- to file this suit
6 contemporaneous with the criminal case. They also chose to
7 file an in rem civil forfeiture complaint, which they've
8 already -- which they've stated to the magistrate that they
9 are agreeing to oppose -- file an opposition to the motion to
10 dismiss.

11 So if they didn't want to litigate the basic
12 sufficiency of their pleading until after the criminal case,
13 why do they file it before the criminal -- at the inception
14 of the criminal case? This is a decision that they made.
15 And at this point, Mr. Parmar has the right to challenge the
16 sufficiency of the pleadings against him, and he opposes the
17 Government's desire to let these insufficient pleadings just
18 hang out there for as long as it takes until the criminal
19 case is resolved.

20 THE COURT: Okay. All right.

21 Mr. Grippo, do you want to respond?

22 MR. GRIPPO: Just very briefly, Your Honor. The
23 motion to dismiss in this case, Your Honor, does not simply
24 challenge the sufficiency of the pleadings or test the due
25 diligence materials that are referenced in the complaint. It

1 goes on to spin a counternarrative that includes the
2 principal victim of the case being the actual fraudster in
3 the case. And Mr. -- Mr. Parmar is alleging not only that
4 the victim was not deceived, but that he actually knew about
5 the fraud and was the mastermind of it, and then engaged in
6 fraudulent bankruptcy. And that's laid out in detail in the
7 paper.

8 THE COURT: Yup. I read it.

9 MR. GRIPPO: And certainly there's nothing about
10 that in the SEC's complaint. That's completely outside of
11 the four corners.

12 And, Your Honor, I would just note one other thing.
13 I know it's a different proceeding that the Court observed
14 that, given the amount of information Mr. Parmar has injected
15 into this motion record, that one course of action could be
16 converting the motion to a summary judgment motion. That has
17 actually happened in a related bankruptcy proceeding --

18 THE COURT: Right.

19 MR. GRIPPO: -- the adversary proceeding. And in
20 that case, Mr. Parmar made similar allegations in a
21 cross-claim, and there was a motion to dismiss the
22 cross-claim, and it panned out in a way that the court
23 eventually converted it to a summary judgment motion, and
24 Mr. Parmar withdrew or filed a motion to withdraw those
25 claims without prejudice based on his Fifth Amendment

1 privilege, because it heated up to a point where it was in a
2 summary judgment posture. And this motion presents the same,
3 you know, fact-sensitive issues. And, you know, we think
4 this would be heading in a similar direction if the Court
5 didn't stay it now.

6 THE COURT: All right.

7 I have carefully considered the parties' arguments,
8 both in their briefing and today. I have also very carefully
9 reviewed the pending motion to dismiss the criminal case and
10 the complaint filed in this matter.

11 As I noted, this case certainly is different than
12 the Walsh matter. In Walsh it was the defendants and not the
13 Government who made the motion to stay the civil case,
14 essentially arguing that requiring them to go forward and
15 engage in discovery would be tantamount to make the -- force
16 them to make the Hobbsian choice between their Fifth
17 Amendment privilege and engaging in civil discovery to defend
18 themselves in the matter. The court identified a number of
19 areas in the civil discovery where -- that would pose
20 particularly acute problems for both the defendants -- and
21 for that matter, the Court -- in terms of navigating those
22 privilege issues. So this case is different.

23 But nonetheless the factors that the Walsh court
24 articulated have come to be well accepted as nonexclusive
25 guiding posts for courts to consider in determining whether

1 to stay pending civil litigation because of a pending
2 criminal matter. And, as the Government notes, this case has
3 now been indicted.

4 Those factors, of course, include the extent to
5 which the issues in the criminal and civil case overlap. In
6 this case, I think all parties agree, and I conclude that
7 there is very substantial overlap. Both cases essentially
8 allege fraud both in terms of securities fraud and conspiracy
9 to commit wire fraud in the manner in which Mr. Parmar and
10 his co-defendants engaged in a variety of methods to
11 essentially give the appearance that their company was
12 capitalized and more profitable and had higher earnings
13 beyond that which was true in order to be able to engage in
14 the deal with the private investment firm. And the manner in
15 which they are alleged to have done so substantially overlaps
16 between the criminal complaint and the civil complaint here.

17 In terms of the second Walsh factor, the status of
18 the case, including whether the defendants have been
19 indicted, in this case, the Government represents now -- and
20 I have no reason to doubt them -- that the matter has been
21 indicted.

22 Accordingly, the first two factors do favor a stay.

23 The third is the interests of, in this case, the
24 defendant as the party opposing the stay in proceeding
25 expeditiously weighed against the prejudice to -- caused by

1 any delay. I think this factor certainly does not favor
2 Mr. Parmar. I do understand his argument that he would like
3 to undergo at least a motion to dismiss in the civil case.
4 But I can't identify any specific prejudice that he would
5 suffer if that motion were to be delayed. He would certainly
6 still have the opportunity, after the criminal case, to make
7 that very same argument. This isn't a situation where he
8 risks losing in the event of a stay evidence to spoliation or
9 fading memories, because there's no party in this case who is
10 seeking to -- or opposing the stay based on the collection of
11 discovery or taking of discovery. It's limited to the motion
12 to dismiss, a motion that could be made certainly at the
13 conclusion of the criminal case.

14 The private interests and burden on the parties
15 doesn't particularly, as far as I can see, apply here.

16 The interests of the Court -- this is particularly
17 significant here. As I already established, I have real
18 concerns over, frankly, the viability of the defendant's
19 motion. It includes -- it would be one thing, as I noted
20 earlier, if it were truly a motion to dismiss in terms of
21 taking the complaint at face value and the hallmark of any
22 Rule 12(b)(6), assuming for purposes of the motion, the
23 allegations set forth in the complaint are true. That is the
24 core of a Rule 12(b)(6) motion; and for that matter, a
25 Rule 12(c) motion.

1 But that is not what the defense here proposes to
2 do. The defense here proposes to do the opposite, and that
3 is to point out that the allegations in the complaint are not
4 true because the materials that the allegation -- or the
5 allegations of the complaint rely on were selectively quoted
6 by the -- by the SEC. In a sense, then, the motion seeks to
7 challenge the accuracy or truthfulness of the assertions.

8 In that regard, I cannot find that the proposed
9 motion really is an appropriate Rule 12(b)(6) -- or for that
10 matter, Rule 12(c) -- motion at all. It's much closer to a
11 Rule -- a summary judgment motion. And in that context,
12 then, is considering matters outside of the pleadings. That
13 in turn, if it were converted to a summary judgment motion --
14 and, of course, Judge Arleo would have the discretion to
15 refuse to consider matters outside the pleadings or to refuse
16 to consider the motion altogether in its current form.

17 But if the Court were to consider the motion and
18 rule on it as summary judgment, as Mr. Grippo pointed out or
19 the Government pointed out, that really would, then, risk
20 the -- run the risk of inconsistent judgments in parallel
21 cases where I've already characterized the allegations in
22 both as substantially -- or the factual and legal issues as
23 being substantially similar.

24 And for those reasons, I'm going to grant the
25 Government's application to stay.

1 Look, frankly, Mr. Parlatore, if the defense wishes
2 to come back and ask the Court to consider that for purposes
3 of a motion that does not include hundreds of pages of
4 exhibits and establishes or takes the complaint at face
5 value, I'm happy to consider that at the appropriate time.
6 But based on the motion to dismiss, Docket Entry 12, that was
7 filed back in August, I cannot agree that the matter should
8 proceed in terms of -- even in the limited purpose of the
9 motion to dismiss.

10 So I'm going to grant the Government's application
11 to intervene and grant the Government's motion to stay
12 without prejudice to the defendant's right to be heard, if at
13 some point the defendant wishes to make a motion to dismiss
14 that is narrowly tailored to truly considering the four
15 corners of the complaint.

16 Anything else for the Government at this time or
17 the SEC?

18 MR. GRIPPO: No, Your Honor. Nothing further from
19 the Government. Thank you.

20 MR. ENRIGHT: Nothing further from the SEC.

21 THE COURT: Mr. Parlatore, anything else for you,
22 sir?

23 MR. PARLATORE: No. Thank you, Judge.

24 THE COURT: All right. Thank you, everyone, we're
25 adjourned.

1 (Conclusion of proceedings at 12:30 P.M.)
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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 31 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

30th of October, 2019

Signature of Approved Transcriber

Date

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